



Charity Law News

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CRA's New Guidance on Relieving Aging Conditions and Charitable Registration

On December 8, 2016 the Canada Revenue Agency (CRA) released a new guidance, CG-026, to explain how it intends to interpret and apply the law as it relates to relieving conditions attributable to being aged and charitable registration. It is not that the law has changed in this area by new legislation or case law. Simply, perhaps as a matter of identifying gaps in the existing guidance, CRA has taken it upon itself to update and replace their 1990 guidance, CPS-002, which was entitled Relief of the Aged. It developed this new guidance in consultation

with various stakeholders in the charitable sector.

CRA says that the law recognizes that relieving conditions attributable to being aged can be charitable. Purposes that relieve conditions attributable to being aged may be charitable under the fourth category of charity: certain other purposes beneficial to the community in a way the law regards as charitable (See *In re Neal*, decd (1966), 110 SJ 549 (Ch), *In re Resch's Will Trusts*, [1967] UKPC 1, [1967] 2 WLR 846, 2 All ER 34, and *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General*, [1983] Ch 159, [1983] 1 All ER 288 [Rowntree]).

Conditions attributable to becoming aged that may be eligible for charitable relief include frailty, social isolation and loneliness, decline in motor skills, flexibility, strength, speed of execution, or hand-eye co-ordination and physical or mental health conditions attributable to being aged. Simply attaining a certain age is not a condition that is eligible for charitable relief. As such a stated purpose that describes the eligible beneficiary group only in terms of age will not meet the public benefit requirement and would not be charitable. Rather, a stated purpose must describe the eligible beneficiary group as including anyone who is affected by a condition attributable to being aged to be charitable at law.

Purposes that could relieve conditions attributable to being aged include:

- to relieve conditions attributable to being aged by providing specially adapted residential accommodation, incidental facilities, and support to aged persons with limited mobility
- to relieve conditions attributable to being aged by providing personal care, housekeeping, meals, nursing, shopping assistance, and transportation to medical appointments to aged persons who are frail
- to relieve conditions attributable to being aged by providing trained personnel and specialized services to aged persons who have

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difficulty doing everyday tasks

Activities will meet the public benefit requirement when they are shown to effectively relieve conditions attributable to being aged, and any private benefit is incidental to achieving the charitable purpose (meaning the private benefit is necessary, reasonable, and proportionate to the resulting public benefit).

Activities which could relieve conditions attributable to being aged include:

- conducting physical activity classes led by qualified instructors to prevent loss of strength, balance, or flexibility
- providing social or recreational activities to relieve social isolation and loneliness
- providing daily living assistance services and meals to alleviate physical or mental incapacity
- providing comfortable, modest housing that includes specially adapted facilities, services, or other amenities to relieve mobility issues

CRA also recognizes that social or recreational activities can directly relieve conditions attributable to being aged, such as social isolation and loneliness or frailty. Where it is obvious that the social or recreational activities directly relieve one or more such conditions, the CRA will generally not require

evidence that the activities satisfy the benefit component of the public benefit requirement. An organization can also conduct its activities according to specific cultural traditions, in the language of its choice, or according to particular religious beliefs, as long as its benefits are made available to anyone in the eligible beneficiary group described in its purpose.

Some acceptable activities in this category may also further other recognized charitable purposes. For example, providing mobility aids to the aged who have a physical condition could also promote health. When an organization provides health care products and services to eligible beneficiaries in order to further any charitable purpose, the health care products or services must meet the applicable requirements relating to effectiveness and quality and safety.

Although a charity cannot be established to provide a private benefit, some private benefit that arises in furthering a charitable purpose may be acceptable. As a general rule, a private benefit is acceptable where it is incidental to achieving a charitable purpose. A private benefit will usually be incidental if it is necessary, reasonable, and proportionate to the resulting public benefit. For example, providing transportation to eligible beneficiaries to allow participation in social activities conducted locally could relieve isolation and loneliness, and would likely be considered necessary, reasonable, and proportionate to the resulting public benefit. On the other hand, while providing transportation to eligi-

ble beneficiaries for social activities conducted in another country could also relieve isolation and loneliness, it would likely be considered disproportionate to the resulting public benefit. Incidental private benefits can be conferred on family members and caregivers of eligible beneficiaries in certain circumstances. For example, an individual is afflicted with mobility issues due to a physical health condition, while the spouse is not so afflicted. When housing is provided to the couple that includes specially adapted facilities, services, or other amenities, the private benefit conferred on the spouse who is not the eligible beneficiary would be considered incidental.

Providing comfortable, modest housing that includes specially adapted facilities, services, or other amenities can provide eligible beneficiaries with relief from conditions attributable to being aged, such as mental or physical disabilities. The organization must make sure that the specially adapted facilities, services, or other amenities effectively relieve the stated conditions. Beneficiaries of housing that includes specially adapted facilities, services, or other amenities are not required to be assessed using an income threshold or other financial criteria. In addition, the housing does not have to be provided at less than fair market value. However, any private benefit that results from providing housing at less than fair market value must be incidental, meaning that it must be necessary, reasonable, and proportionate to the resulting public benefit.

CRA has indicated that they will be conducting a post-implementation review within one year after the publication of this guidance product and amendments could be made following this review. It has thusly suggested that the public provide their comments and suggestions on the new guidance. For those who may be so inclined, feedback can be sent by email to consultation-policy-politique@cra-arc.gc.ca, or by mail to Charities Directorate, Attn: Policy, Planning, and Legislation Division, Canada Revenue Agency, Ottawa ON K1A 0L5 or by fax to 613-948-1320, Attn: Policy, Planning, and Legislation Division. ■

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